

SECOND REGULAR SESSION

# SENATE BILL NO. 1001

92ND GENERAL ASSEMBLY

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INTRODUCED BY SENATOR WHEELER.

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Pre-filed January 6, 2004, and ordered printed.

TERRY L. SPIELER, Secretary.

3542S.02I

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## AN ACT

To amend chapter 197, RSMo, by adding thereto eight new sections relating to end stage renal disease, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

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Section A. Chapter 197, RSMo, is amended by adding thereto eight new sections, to be known as sections 197.800, 197.802, 197.804, 197.806, 197.808, 197.810, 197.812, and 197.814, to read as follows:

**197.800. As used in sections 197.800 to 197.814, unless the context clearly indicates otherwise, the following terms shall mean:**

- (1) "Abuse", as defined pursuant to section 198.006, RSMo;**
- (2) "Department", the department of health and senior services;**
- (3) "End Stage Renal Disease Dialysis Facility", a hospital unit, or a facility that is approved to furnish the full spectrum of diagnostic, therapeutic, and rehabilitative services required for the care of the end stage renal disease patient;**
- (4) "Government Unit", any city, county, or other political subdivision of this state or any department, division, board, or other agency of any political subdivision of this state;**
- (5) "Licensed Practical Nurse" or "Practical Nurse", a person licensed pursuant to the provisions of sections 335.011 to 335.096, RSMo, to engage in the practice of practical nursing;**
- (6) "Person", any individual, firm, partnership, corporation, company, or association and the legal successors thereof;**
- (7) "Physician", any physician and surgeon licensed pursuant to chapter 334, RSMo, by the state board of registration for the healing arts in the state of Missouri;**
- (8) "Registered Professional Nurse" or "Registered Nurse", a person licensed pursuant to the provisions of sections 335.011 to 335.096, RSMo, to engage in the**

practice of professional nursing.

197.802. 1. No person or governmental unit acting severally or jointly with any other person or governmental unit shall establish, conduct, or maintain an end stage renal disease dialysis facility in this state without a license issued pursuant to section 197.806 by the department.

2. Nothing in sections 197.800 to 197.814 shall be construed to impair or abridge the authority of a governmental unit who is in compliance with all rules, regulations, and standards adopted by the department to implement the provisions of sections 197.800 to 197.814.

197.804. 1. Application for a license shall be made to the department upon forms provided by the department and shall contain such information as the department may require. The department may require affirmative evidence of ability to comply with such reasonable standards, rules, and regulations as are lawfully prescribed under the provisions of sections 197.800 to 197.814.

2. Each application for a license, including original application, annual renewal application, change of ownership application, and relocation application, shall be accompanied by an annual license fee not to exceed twenty-five hundred dollars. All license fees shall be deposited in the Missouri public health services fund, to be used solely for the purpose of supporting the licensing and training activities of health facilities. All fees provided for in this section shall be collected by the director of the department and deposited with the state treasurer in the Missouri public health services fund as established in section 192.900, RSMo. The provisions of section 33.080, RSMo, to the contrary notwithstanding, money in this fund shall not be transferred and placed to the credit of the general revenue at the end of the biennium, but shall be used, upon appropriation by the general assembly, for the purpose of carrying out the provisions of sections 197.800 to 197.814.

197.806. 1. Upon receipt of an application for a license, the department shall issue a license if the applicant and the end stage renal disease dialysis facility meet the requirements established pursuant to section 197.804 and have provided affirmative evidence that:

(1) Each member of the medical staff is a physician currently licensed to practice in Missouri;

(2) Dialysis treatments shall be performed only by the order of a physician who at the time is privileged to admit patients in at least one licensed hospital located within twenty minutes driving time under normal driving conditions, which shall provide assurance to the public that patients treated in the dialysis facility shall receive continuity of care should the services of a hospital be

required. In addition, an applicant shall submit a copy of a current working agreement with at least one licensed hospital located within twenty minutes driving time under normal driving conditions, guaranteeing the transfer and admittance of patients for emergency treatment whenever necessary. If there is no hospital located within twenty minutes driving time under normal driving conditions, then the agreement must be with the closest acute care hospital with twenty-four hour emergency services coverage;

(3) Continuous physician services or registered professional nursing services are provided whenever a patient is in the facility and for emergency situations; and

(4) Adequate and complete medical records for each patient are maintained.

2. Upon receipt of an application for a license, or the renewal thereof, the department shall issue or renew the license if the applicant and program meet the requirements established pursuant to this section. Each license shall be issued only for the persons and premises named in the application. A license, unless previously suspended or revoked, shall be issued for a period of one year.

3. Each license shall be issued only for the premises and persons or governmental units named in the application and shall not be transferable or assignable except with the written consent of the department. Licenses shall be posted in a conspicuous place on the premises.

4. If during a period in which an end stage renal disease dialysis facility license is in effect, the license holder or operator legally transfers operational responsibilities by any process to another person, an application shall be made for the issuance of a new license to become effective on the transfer date.

197.808. 1. The department may deny, suspend or revoke a license in any case in which the department finds that there has been a substantial failure to comply with the requirements of sections 197.800 to 197.814, or in any case in which the director of the department makes a finding that:

(1) The applicant, or if the applicant is a firm, partnership, or association, any of its members, or if a corporation, any of its officers or directors, or the person designated to manage or supervise the facility, has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense related to the provision or receipt of healthcare, or for any offense an essential element of which is fraud, dishonesty, or an act of violence, or abuse, whether or not sentence is imposed;

(2) The operator or any principals in the operation of the facility have ever been convicted of a felony offense concerning the operation of a health care

facility or ever knowingly acted or knowingly failed to perform any duty which materially and adversely affected the health, safety, welfare or property of a resident, while acting in a management capacity. The operator of the facility or any principal in the operation of the facility shall not be under exclusion from participation in the title XVIII (Medicare) or title XIX (Medicaid) program of any state or territory.

2. Whenever the department has reasonable grounds to believe that a facility required to be licensed pursuant to sections 197.800 to 197.814 is operating without a license and the department is not permitted access to inspect the facility or when a licensed operator refuses to permit access to the department to inspect the facility, the department shall apply to the circuit court of the county in which the premises is located for an order authorizing entry for such inspection. The court shall issue the order if it finds reasonable grounds for inspection or if it finds that a licensed operator has refused to permit the department access to inspect the facility.

197.810. Any person aggrieved by a final decision of the department affecting the licensed status of a person pursuant to section 197.806, including the refusal to grant, the revocation, the suspension, or the failure to renew a license, may seek a determination thereon by the administrative hearing commission pursuant to the provisions of section 621.045, RSMo, and it shall not be a condition to such determination that the person aggrieved seek a reconsideration, a rehearing, or exhaust any other procedure within the department.

197.812. 1. The department may adopt such rules, regulations, and standards for the types of services provided as are necessary to carry out the provisions of sections 197.800 to 197.814, and to assure quality patient care and patient safety, which shall include, but not be limited to:

(1) Construction of the facility including, but not limited to plumbing, heating, water system, lighting, and ventilation which should insure the health, safety, comfort, and privacy of patients and protection from fire hazard;

(2) Number, qualifications, and organization of all personnel having responsibility for any part of the care provided to the patients;

(3) Equipment essential to the health, welfare, and safety of the patients;

(4) Facilities, program, and services to be provided in connection with the care of patients in the end stage renal disease dialysis facility; and

(5) Procedures for peer review and for receiving and investigating complaints regarding the end stage renal disease dialysis center or any physician, nurse, assistant, manager, supervisor, or employee practicing or working in any such facility.

2. The department shall make such inspections and investigations as it deems necessary.

197.814. 1. Any person operating, conducting, managing, or establishing an end stage renal disease dialysis facility without a license required pursuant to sections 197.800 to 197.814 is guilty of a class A misdemeanor and, upon conviction, shall be subject to a fine of not more than five hundred dollars. Each day of the continuing violation shall constitute a separate offense.

2. The attorney general shall represent the department and shall institute an action in the name of the state for injunctive relief against any person or governmental unit to restrain or prevent the establishment, conduct, management, or operation of an end stage renal disease dialysis facility without a license issued pursuant to sections 197.800 to 197.814.

3. Any person operating, conducting, managing, or establishing an end stage renal disease dialysis facility who, in the course of advertising, promoting, or otherwise publicizing the activities, business, location, or any other matter concerning the operations of said end stage renal disease dialysis facility, uses or employs in any manner the words "'State', 'Missouri', 'State of Missouri', 'Department of Health and Senior Services', the initials 'Mo.'", or any emblem of the state of Missouri or the department of health and senior services, for the purpose of conveying the false impression that the state of Missouri or any department, agency, bureau, or instrumentality thereof is involved in the business of said end stage renal disease dialysis facility or took part in said advertisement, promotion, publicity, or other statement, shall be subject to a fine of one hundred dollars per day for each day during the period beginning with the day the advertisement, promotion, publication, or statement first appears and ending on the day which it is withdrawn.

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